

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 860 of 95

RAVISHANKAR AMRUTLAL VYAS

..Petitioner

Versus

KAMLABEN ASHABHAI PATEL

..Respondents

Appearance:

MR BN RAVAL

for Petitioner

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 23/02/96

ORAL ORDER:

The present Civil Revision Application, which is for and on behalf of the petitioner appellant-original plaintiff-landlord, deserves a rejection. The plaintiff-landlord has approached the Trial Court for a decree of eviction against the defendants, on four counts. Firstly, according to the plaintiff, the defendants nos.1, 2 and 3, who happen to be the heirs and legal representatives of deceased Ashabhai Patel, had sublet the premises to the respondent no.4-Mohanbhai Bariya. The second count was that the defendants nos.1, 2 and 3 had acquired vacant possession of a suitable residential accommodation. The third count, on which the decree was sought for was, in respect of the bona fide personal requirements of the landlord. Lastly, the decree was prayed for, on the ground of arrears of rent, for a period of more than six months. During the course of the trial, the last count of the four grounds was given a go-bye. At the appellate stage, ground nos.2 and 3 were also given a clean go-bye. The question, therefore, which falls for my consideration, in the present Civil Revision Application is, regarding the sub-letting. I am called upon to decide as to whether the Courts below have erred in coming to the conclusion that the plaintiff-landlord could not prove sub-letting, transfer or assignment of his rights in favour of the respondent no.4-Mohanbhai Bariya.

Upon the perusal of the evidence, it appears that, the

finding recorded by the Courts below are in consonance with law and facts, both. The defendants nos.1, 2 and 3 had taken up a case that, they have some house property in the village and that the suit premises were taken on lease, by the defendant no.4 and that, he was the tenant. On the other hand, the say of the plaintiff-landlord is that, there has been a sub-letting in favour of the defendant no.4 qua the suit premises.

The important aspect which, probably, not projected in the pleadings is the fact that, previously, also, the plaintiff-landlord had filed a Suit against the defendant no.4 for obtaining a decree of eviction. The decree was sought for on various grounds, but, ultimately, there was a compromise, under which, the matter came to be compounded. The decree based upon the consent terms is at Exh.28. The case of the plaintiff-landlord was that, under the consent decree, the defendant no.4 had not parted with the actual physical possession and, therefore, he was required to take out the execution proceedings against the defendant no.4. The Courts below have noticed, with great pertinence that, if the possession was later on, obtained in the execution proceedings under the intervention of the Court, something in form of documentary evidence, could have been produced to satisfy the conscience of the Court that, the possession of the suit premises was obtained from the defendant no.4, by the plaintiff in the execution proceedings and, later on, the suit premises were leased by the plaintiff-landlord to deceased Ashabhai. If this part could have been examined, there could have been the further endeavour to show that, neither Ashabhai or the defendants nos.1, 2 and 3, his heirs and legal representatives were guilty of sub-letting the premises in favour of the defendant no.4. But, as noticed by the Courts below, nothing was presented before the Court to show that, the decree based upon the consent terms ever came to be executed. Learned Counsel Mr. Raval, who appears for the petitioner urges that, there was no need of producing anything in form of documentary evidence to show that, the decree came to be executed in the execution proceedings under the intervention of the Court and that, the oral evidence, in this respect, would suffice. The contention does not appear to be tenable because, no such plea was taken in the pleadings. It was also an endeavour on the part of the learned Counsel to show that, in that case, the defendant no.4 could have produced the necessary documentary evidence, in this respect. This contention also, runs counter to the principles regarding the adducing of evidence, both oral and documentary. If at a later juncture, the plaintiff wanted to urge that, under the consent decree, which was duly executed, the defendant no.4 had handed over the possession to him, then it was his bounden duty to establish this fact, by adducing documentary evidence.

When the parties go to a trial Court, knowing full well their case, irrespective of the principle of burden or onus of proof, the party who would be in possession of the documents which would throw light on the real controversy between the parties, should adduce that evidence. In the instant case, if the plaintiff-landlord wanted to believe the Court that, in past, he was successful in obtaining the possession of the premises from the defendant no.4 and later on, the premises came to be leased in favour of deceased Ashabhai, he should have done so, by adducing necessary evidence, in this respect. That has not been done. As rightly, pointed out by the Courts below, the plaintiff should fail on this count. I do not see any justifiable reason for causing any interference with the finding recorded by the Courts below. The Civil Revision Application, therefore, fails and the same is hereby rejected.

At this juncture, learned Counsel Mr. Raval urges that, the reference to the reply of the notice given by the defendant no.2 in which he has, probably, said that, they are in possession since last many years. This contention coming from the learned Counsel and the averments in reply to the notice, do not appear to be decisive in deciding the question as to whether the actual physical possession of the premises was obtained by the plaintiff-landlord from the defendant no.4 in the execution proceedings. This plea, therefore, would not oblige me to have a different view than what I have expressed earlier. The net result of this contention is that, the petition requires a rejection.

23rd February 1996 (S.D. Dave, J.)